

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Petition of Standing Rock
Telecommunications, Inc. for)
Designation as an Eligible Telecommunications)
Carrier Pursuant to Section 214(e)(6) of the)
Telecommunications Act of 1996.)

Petition of Standing Rock)
Telecommunications, Inc.,)
To Redefine Rural Service Areas)

WC Docket No. 09-197

REPLY COMMENTS OF PETITIONER, STANDING ROCK
TELECOMMUNICATIONS, INC.

Standing Rock Telecommunications, Inc. ("SRTI")¹, replies to the initial comments filed on its Petition for Reconsideration of the Wireline Competition Bureau's ("Bureau") August 24, 2010 ETC Designation Order ("Order") as follows:

SRTI has petitioned the Bureau for reconsideration of paragraphs 25, 27, and 28 (among others) of the Order in which the Commission refers the redefinition of West River's service area to the State of North Dakota for concurrence before that redefinition is effective.

A majority of commenting parties who filed comments in response to the Bureau's October 15, 2010 Public Notice support SRTI's Petition for Reconsideration. These supporting commenters include the Coeur d'Alene Tribe (a federally recognized Indian Tribe), the Cheyenne River Sioux Tribe Telephone Authority ("CRSTTA"), a tribally-owned Eligible Telecommunications

¹ SRTI is a 100% Tribal-government owned wireless carrier of the Standing Rock Sioux Tribe ("SRST"), recently designated an Eligible Telecommunications Carrier ("ETC") for entire wire centers within its licensed service area within the Standing Rock Sioux Reservation in the Wireline Competition Bureau's ("Bureau") Memorandum and Order dated August 24, 2010 ("Order"). While SRTI and SRST are pleased with the ETC designation, SRTI seeks Bureau reconsideration of the provision that redefinition of the rural service area must be conditioned on SRTI obtaining the "consent" of the State of North Dakota.

Carrier, and the Chairman and CEO of the telecommunications company Tehan Woglake, a member of the Rosebud Sioux Tribe of South Dakota. All three commenters agree that a rural service area redefinition for tribal telecommunications service providers should be the “responsibility of the Commission,” and that this is compelled by the authority granted the Commission under 47 U.S.C. § 214(e)(6) for “common carriers not subject to state commission jurisdiction,” by Commission precedent ranging from the *Indian Policy Statement* to the Commission’s prior reconciliation of the language of pre-existing Section 54.207 of the Commission’s Rules with the mandatory preemption of state regulation of tribally-owned common carriers such as SRTI — including state commission approval of rural service area redefinition — as provided for by Congress’ enactment of Section 214(e)(6).²

Only two parties have filed initial comments opposing the petition for redefinition³: the North Dakota Public Service Commission (“NDPSC”), which seeks to exercise jurisdiction; and West River Telecommunications Cooperative (“West River”), the incumbent rural telephone company whose rural service area is being redefined by the Commission’s Order. None of their arguments overcome the mandatory statutory directive of Section 214(e)(6) or of controlling Commission precedent.

For example, both the NDPSC and West River argue that the NDPSC has jurisdiction over West River as an incumbent rural telecommunications company.⁴ West River argues that the Bureau’s referral of the redefinition proposal was “based on [the FCC’s recognition of] the jurisdiction of the NDPSC ~~over West River~~.⁵” This is incorrect. The Bureau’s conditioning of the Standing Rock designation in the three redefined West River wire centers was based solely on the

² Comments of Coeur d’Alene Tribe at 2-3; Comments of CRSTTA at 5-7; Comments of Tehan Woglake at 1-2.

³ The South Dakota Commission filed no Initial Comments, but did serve Reply Comments opposing the Petition on November 30, 2010 which appear to be consistent with the Comments of the ND PSC.

⁴ Comments of NDPSC at 2 (quoting N.D.C.C. § 49-21-01.7(13)(“the Commission has the power to designate geographic service areas for the purpose of determining universal service obligation and support mechanisms under the federal act.”); Comments of West River at 4.

⁵ Comments of West River at 4.

Bureau's interpretation of the requirements of Commission Rule 54.207(d), not on any state statutory authority for regulation of incumbent rural telephone companies.⁶ But, as SRTI has conclusively demonstrated, the Commission itself found in its *Western Wireless* Opinion and Order that Commission Rule 54.207(d) was superseded by the subsequent enactment of Section 214(e)(6).

This rule therefore, did not contemplate the current situation in which the Commission, in the absence of state jurisdiction over a carrier [a tribally-owned carrier such as SRTI operating exclusively within tribal boundaries], has a statutory obligation to be the sole designating entity under section 214(e)(6).⁷

The NDPSC does not even mention the Commission Rule nor the statutory mandate of Section 214(e)(6) upon the Commission in its Comments.

On the other hand, West River is either confused about the significance of the "Eligible Telecommunications Carriers Act of 1997", as found in Section 214(e)(6) or, for its own interests, simply ignores its impact upon tribally-owned common carriers seeking ETC designation. As the legislative history makes clear, Congress amended Section 214(e) of the 1996 Act because "States...have no jurisdiction over tribally owned common carriers..." and to address that fact, Section 214(e)(6) was enacted to fill that void, to give telephone companies owned by certain federally-recognized Indian tribes an opportunity to become designated as ETCs and to receive federal universal service support.⁸

West River counters SRTI's reliance on the mandatory language of Section 214(e)(6) by relying on seemingly contrary language in the final sentence of Section 214(e)(5) ("SERVICE AREA

⁶ "Consistent with Commission rules, Standing Rock's designation in the three rural telephone company wire centers is conditioned on the consent of the North Dakota Commission to redefinition of West River's service area." Order, ¶13 & n.38 (citing 47 C.F.R. § 54.207(d)) (Emphasis added). "In accordance with our rules, we will submit this order to the North Dakota Commission and request that the state commission treat it as a petition to redefine West River's service area." Order, ¶27 & n.68-69 (citing 47 C.F.R. § 54.207(d)) (Emphasis added); see also SRTI Petition for Reconsideration at 3 & n.2 (same).

⁷ *Western Wireless*, Memorandum Opinion and Order, 16 FCC Rcd 18133, at 18140(2001); see SRTI Petition for Reconsideration at 3-4 (quoting Order).

⁸ Congressional Record, S12568 (Nov. 13, 1997)(quoting Senator McCain) & H10808 (quoting Rep. Markey)(filed as exhibits to SRTI's written *ex parte* in WC Docket No. 09-197 (October 29, 2010)

DEFINED”), which defines a rural telephone company’s service area as its “study area” unless and until “the Commission and the States” establish a different definition. However, West River’s dissection of the final sentence of Section 214(e)(5) ignores the critical fact that Congress included a parenthetical in the first sentence of Section 214(e)(5) to reference the other alternative for service area redefinition: the introduction of new exclusive Commission authority under Section 214(c)(6) over tribally-owned carriers not subject to state jurisdiction: “[t]he term ‘service area means a geographic area established by a State Commission (or the Commission under paragraph (6)) for the purpose of determining universal service obligations and support mechanisms.’” Thus, as CRSTTA’s comments recognize,¹⁰ the Commission has exclusive statutory authority to redefine a rural telephone company’s service area in the case of a common carrier, such as a tribally-owned carrier, that is not subject to state jurisdiction.

Accordingly, in the case of a tribally-owned carrier such as SRTI, which by definition is not subject to state commission jurisdiction, West River’s reliance on other provisions such as 47 U.S.C. § 410(b) (referenced in Section 214(e)(5)),¹¹ and North Dakota statutes are of no relevance. Nor does the fact that not all consumers living within the exchanges are Native Americans (many residents are not Native Americans on other reservations with tribally-owned ETCs); as West River

⁹ 47 U.S.C. § 214(e)(5)(Emphasis added); compare Section 214(e)(5) as enacted under the 1996 Act with amended Section 214(e)(5) following enactment of the Eligible Telecommunications Carriers Act of 1997. Similarly, the Commission’s 1997 *Universal Service First Report and Order*, upon which the Bureau appears to have relied for the language in the Order that the Act “requires” that the Commission and the appropriate state commission “agree” to redefine the rural telephone company’s service area, was based on the 1996 Act before the statute was amended by the Eligible Telecommunications Carriers Act of 1997 to address the situation of common carriers not subject to state jurisdiction. See Order at ¶7 & nn. 16-17; *Universal Service First Report and Order*, 12 FCC Rcd at 8880-81, para. 187 (“[t]he plain language of section 214(e)(5) dictates that neither the Commission nor the states may act alone to alter the definition of service areas served by rural carriers.”).

¹⁰ Comments of CRSTTA at 5 (“[W]hen Congress amended the Communications Act in 1997, it also amended the first sentence of 47 U.S.C. §214(e)(5) to make it consistent with the new § 214(e)(6) such that an ETC’s service area can alternatively be ‘established by...the Commission under paragraph 6.’”).

¹¹ Comments of West River at 3-5.

asserts, have any consequence.¹² The issue is whether a tribally-owned carrier operating within the boundaries of its reservation is subject to state commission jurisdiction.

West River also argues that “[t]here is no question that the NDPSC has state jurisdiction over aspects of West River’s operations, including the definition of its service area for universal service purposes.¹³” But West River’s own filings with the Commission confirm otherwise. In West River Telecommunications Cooperative’s May 9, 2002 certification filing with the Commission to disaggregate and target its high cost universal service support for its study area in the State of North Dakota (SAC 381637), West River elected disaggregation “Path 3” of a carrier “not subject to state jurisdiction.¹⁴” Why West River stated it was “not subject to state jurisdiction” in a federal High Cost Fund disaggregation certification filing is not entirely clear, especially given its contrary statements in its Comments, but it did so. Rule 315(d)(6) is a disaggregation path for “carriers not subject to the jurisdiction of a state, e.g. certain tribally owned carriers....”¹⁵ West River represented to the Commission that “[t]he North Dakota...Commission has ruled that it does not have jurisdiction over this matter” and apparently filed a letter from the NDPSC “Claiming Lack of Authority to Act on Disaggregation Plan.” Therefore, even in the case of the rural telephone company West River, much of whose study area (including three wire centers) is within the boundaries of the Standing Rock Sioux Reservation, the North Dakota Commission appears to have disclaimed jurisdiction in favor of the Commission’s jurisdiction. Neither West River, nor the NDPSC or any state commission, should be allowed to selectively claim that it has jurisdiction over federal universal service matters involving wire centers in the same rural service area. This is

¹² *Id* at 4.

¹³ *Id* at 4 & n.8 (citing N.D.C.C. § 49-21-01.7(13) and quoting N.D.C.C. § 49-21-01.7(12)(“[t]he NDPSC has the power to ‘[d]esignate telecommunications companies as eligible telecommunications carriers to receive universal service support under sections 214 and 254 of the federal act.’”).

¹⁴ West River Telecommunications Cooperative - Path 3 Disaggregation Election (May 9, 2002)(attached as Exhibit A).

¹⁵ 47 C.F.R. § 54.315(d)(6).

particularly true in cases such as here when Congress has mandated that state commissions have no jurisdiction over tribally-owned common carriers.

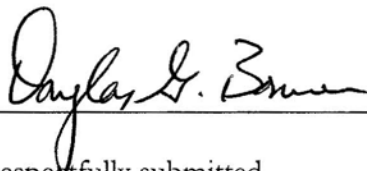
CONCLUSION

SRTI respectfully submits that the Commission interpret and apply its governing statutes and regulations in a “manner that comports with tribal sovereignty and the federal policy of empowering tribal independence” as outlined in the Twelfth Report and Order.¹⁶

Specifically, SRTI requests that the Commission reconsider its interpretation of the interaction between the controlling statute, 47 U.S.C. § 214(e)(6) and pre-existing Commission Rule 54.207(d)(1), and hold consistent with its own precedent in *Western Wireless* that the Commission alone has the authority to make the ETC designation of a tribally-owned carrier, including redefining a rural study area contained within the boundaries of an Indian reservation. Accordingly, SRTI requests that the Commission amend paragraphs 7, 13, 25, 27 and 28 of its August 24, 2010 Order, to remove any requirement that SRTI consult with the North Dakota Commission to obtain its consent to the Commission’s redefinition of the rural service area of West River, and amend the August 24, 2010 order so that the Commission’s proposed redefinition of West River’s service area is effective as of the date of release of the August 24, 2010 order.

¹⁶ *Twelfth Report and Order*, FCC Rcd 12208 at Para. 119

DATED NOVEMBER 30, 2010.



Respectfully submitted,

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Certificate of Service

I hereby certify that on November 30, 2010 a copy of the foregoing Petition of Standing Rock Telecommunications, Inc. to Reconsider was served on the following parties by First-Class Mail, postage prepaid:

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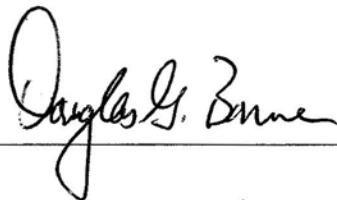
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**WEST RIVER TELECOM**

May 9, 2002

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Irene Flannery
Universal Service Administrative Company
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RE: WEST RIVER TELECOMMUNICATIONS – PATH 3 DISAGGREGATION
ELECTION

Dear Mr. Caton:

West River Telecommunications Cooperative (“West River”), pursuant to 47 CFR, Part 54, Section 315(d), hereby certifies that it will disaggregate and target high cost universal service support into no more than two cost zones per wire center. West River serves a study area in the State of North Dakota, NECA Study Area Code: 381637, and receives federal universal service support in North Dakota. As indicated in part (6) of this subsection, carriers not subject to state jurisdiction may select Path 3, but must certify this election through the Federal Communications Commission. The North Dakota Public Utilities Commission has ruled that it does not have jurisdiction over this matter. West River therefore, provides the enclosed certification before this Commission

In accordance with 47 CFR, Part 54, Section 315 (d), this election shall be effective upon filing. This election shall not limit the Company’s ability to petition for a modification to the disaggregation and targeting of support selected under this path.

Enclosed with this election, pursuant to 47 CFR, Part 54, Section 315 (d), (e) and (f), are the following attachments:

Attachment 1: Description of the Rationale Used



WEST RIVER TELECOM

Attachment 2: Per-Line Level of Support for Each Category of High-Cost
Universal Service Support Provided

William F. Caton, FCC
Irene Flannery, USAC
May 9, 2002
Page 2

Attachment 3: Ratio of Per-Line Support Between Disaggregation Zones for Each
Disaggregated Category of Support

Attachment 4: Maps Identifying the Boundaries of the Designated Disaggregation
Zones of Support

Attachment 5: Letter from ND PSC Claiming Lack of Authority to Act on
Disaggregation Plan

The ratios reflected in Attachment 3 provide the basis for calculating disaggregated annual support during the period this plan remains in effect. These ratios are applied to the Company's federal universal service support amounts in each successive year or reporting period to determine the disaggregation support levels for each element in each exchange.

My signature below certifies that I am an authorized representative of West River Telecommunications Cooperative.

Respectfully submitted,

Albert Grosz
CEO/General Manager – West River Telecommunications Cooperative

cc: North Dakota PSC
South Dakota PUC